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(e) If the agency provides advance payments under the contract at no interest to the prime contractor, the contracting officer shall use the clause with its *Alternate IV*.

(f) If the requirement for a special account is eliminated in accordance with 32.409-3 (e) or (g), the contracting officer shall insert in the solicitation or contract the clause set forth in *Alternate V* of 52.232-12, Advance Payments, instead of the basic clause.

[48 FR 42328, Sept. 19, 1983, as amended at 55 FR 25530, June 21, 1990; 66 FR 2138, Jan. 10, 2001]

Subpart 32.5—Progress Payments Based on Costs

32.500 Scope of subpart.

This subpart prescribes policies, procedures, forms, solicitation provisions, and contract clauses for providing contract financing through progress payments based on costs. This subpart does not apply to—

(a) Payments under cost-reimbursement contracts, but see 32.110 for progress payments made to subcontractors under cost-reimbursement prime contracts; or

(b) Contracts for construction or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based on a percentage or stage of completion.

[48 FR 42328, Sept. 19, 1983, as amended at 65 FR 16279, Mar. 27, 2000]

32.501 General.

Progress payments may be customary or unusual. Customary progress payments are those made under the general guidance in this subpart, using the customary progress payment rate, the cost base, and frequency of payment established in the Progress Payments clause, and either the ordinary liquidation method or the alternate method as provided in subsections 32.503-8 and 32.503-9. Any other progress payments are considered unusual, and may be used only in exceptional cases when authorized in accordance with subsection 32.501-2.

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32.501-1 Customary progress payment rates.

(a) The customary progress payment rate is 80 percent, applicable to the total costs of performing the contract. The customary rate for contracts with small business concerns is 85 percent.

(b) The contracting officer must—

(1) Consider any rate higher than those permitted in paragraph (a) of this section an unusual progress payment; and

(2) Not include a higher rate in a contract unless advance agency approval is obtained as prescribed in 32.501-2.

(c) When advance payments and progress payments are authorized under the same contract, the contracting officer must not authorize a progress payment rate higher than the customary rate.

(d) In accordance with 10 U.S.C. 2307(e)(2) and 41 U.S.C. 255, the limit for progress payments is 80 percent on work accomplished under undefinitized contract actions. The contracting officer must not authorize a higher rate under unusual progress payments or other customary progress payments for the undefinitized actions.

[65 FR 16279, Mar. 27, 2000]

32.501-2 Unusual progress payments.

(a) The contracting officer may provide unusual progress payments only if—

(1) The contract necessitates predelivery expenditures that are large in relation to contract price and in relation to the contractor's working capital and credit;

(2) The contractor fully documents an actual need to supplement any private financing available, including guaranteed loans; and

(3) The contractor's request is approved by the head of the contracting activity or a designee. In addition, see 32.502-2.

(b) The excess of the unusual progress payment rate approved over the customary progress payment rate should be the lowest amount possible under the circumstances.

(c) Progress payments will not be considered unusual merely because

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they are on letter contracts or the definitive contracts that supersede letter contracts.

32.501-3 Contract price.

(a) For the purpose of making progress payments and determining the limitation on progress payments, the contract price shall be as follows:

(1) Under firm-fixed-price contracts, the contract price is the current contract price plus any unpriced modifications for which funds have been obligated.

(2) If the contract is redeterminable or subject to economic price adjustment, the contract price is the initial price until modified.

(3) Under a fixed-price incentive contract, the contract price is the target price plus any unpriced modifications for which funds have been obligated. However, if the contractor's properly incurred costs exceed the target price, the contracting officer may provisionally increase the price up to the ceiling or maximum price.

(4) Under a letter contract, the contract price is the maximum amount obligated by the contract as modified.

(5) Under an unpriced order issued against a basic ordering agreement, the contract price is the maximum amount obligated by the order, as modified.

(6) Any portion of the contract specifically providing for reimbursement of costs only shall be excluded from the contract price.

(b) The contracting officer shall not make progress payments or increase the contract price beyond the funds obligated under the contract, as amended.

32.501-4 [Reserved]

32.501-5 Other protective terms.

If the contracting officer considers it necessary for protection of the Government's interest, protective terms such as the following may be used in addition to the Progress Payments clause of the contract:

(a) Personal or corporate guarantees.

(b) Subordinations or standbys of indebtedness.

(c) Special bank accounts.

(d) Protective covenants of the kinds in paragraph (p) of the clause at 52.232-12, Advance Payments.

(e) A provision, included in the solicitation and resultant contract when first article testing is required (see subpart 9.3), limiting progress payments on first article work by a stated amount or percentage.

[48 FR 42328, Sept. 19, 1983, as amended at 55 FR 52794, Dec. 21, 1990]

32.502 Preaward matters.

This section covers matters that generally are relevant only before contract award. This does not preclude taking actions discussed here after award, if appropriate; e.g., postaward addition of a Progress Payments clause for consideration.

32.502-1 Use of customary progress payments.

The contracting officer may use a Progress Payments clause in solicitations and contracts, in accordance with this subpart. The contracting officer must reject as nonresponsive bids conditioned on progress payments when the solicitation did not provide for progress payments.

[65 FR 16280, Mar. 27, 2000]

32.502-2 Contract finance office clearance.

The contracting officer shall obtain the approval of the contract finance office or other offices designated under agency procedures before taking any of the following actions:

(a) Providing a progress payment rate higher than the customary rate (see 32.501-1).

(b) Deviating from the progress payments terms prescribed in this part.

(c) Providing progress payments to a contractor—

(1) Whose financial condition is in doubt;

(2) Who has had an advance payment request or loan guarantee denied for financial reasons (or approved but withdrawn or lapsed) within the previous 12 months; or

(3) Who is named in the consolidated list of contractors indebted to the United States (known commonly as the *Hold-up List*).